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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,190	05/18/2006	Gordon Calundann	2011.11	3275
7590 Hammer & Hanf, P.C. 3125 Springbank Lane Suite G Charlotte, NC 28226	07/30/2009		EXAMINER TRUONG, DUC	
			ART UNIT 1796	PAPER NUMBER
			MAIL DATE 07/30/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/538,190	CALUNDANN ET AL.
	Examiner	Art Unit
	Duc Truong	1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
 - 4a) Of the above claim(s) 12-18 is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>120905</u> .	6) <input type="checkbox"/> Other: ____ .

DETAILED ACTION

In the response to the restriction requirement, Applicant elects group I, claims 1-11, with traverse. In the case if claims 1-11 are in condition for allowance, then any claims embrace the claims of group I will be rejoined and be allowed also.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1422177 or EP 0476560 or Sheratte (4154919) in view of Choe et al (4535144), they are of record on 1449.

GB 1422177 discloses a method for producing polyazoles having an inherent viscosity of 4.5 in 0.3% resin solution in 100% sulfuric acid at 30 C (See page 4, example 1);

EP 0476560 discloses a method for producing polyazoles having an inherent viscosity of 1.6dL/g (See page 11, example 6);

Sheratte discloses a method for producing polyazoles having an inherent viscosity of 1.8 in 0.5 % of sulfuric acid (see col. 11, example 4).

The disclosures of the references differ from the instant claims in that they neither disclose the claimed steps of the process nor the claimed intrinsic viscosities.

However, the inherent viscosities in the references can be converted into intrinsic viscosities by multiplication with the factor 1.0585, as disclosed in Choe et al at col. 8, line 36, due to the values thus obtained are all within the claimed range.

Further, the instant claims are product by process, which can be considered as the claimed product unless Applicant provides evidence to show the unexpected characteristics in the use of specific steps of the process. But not in this case, since the references do disclose the product having the claimed intrinsic viscosity, which is at least 1.3 dL/g.

Therefore, it would have been obvious to one of ordinary skill in the art to convert the inherent viscosities into intrinsic viscosities, as disclosed in Sheratte, in the process for producing polyazoles, as disclosed in GB 1422177 or EP 0476560, in order to gain the advantages of the combination of the references, that being a polyazole product having the claimed intrinsic viscosity.

The conversion of the inherent viscosity into intrinsic viscosity in the process for producing polyazoles having the claimed intrinsic viscosity would not provide any unexpected results to one of ordinary skill in the art.

Claim Rejections - 35 USC § 112

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since

the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation a temperature of up to 350 C in step B, and up to 450 C in step D, and the claim also recites up to 300 C in step B, and up to 400 C in step D, which is the narrower statement of the range/limitation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc Truong whose telephone number is 571-272-1081. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Duc Truong/
Primary Examiner, Art Unit 1796